

**MEMO# 29204**

July 30, 2015

# Institute Comment Letters Filed on DOL Fiduciary Proposal

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TO: PENSION MEMBERS No. 24-15  
OPERATIONS MEMBERS No. 25-15  
SMALL FUNDS MEMBERS No. 34-15  
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 27-15  
BROKER/DEALER ADVISORY COMMITTEE No. 37-15  
TRANSFER AGENT ADVISORY COMMITTEE No. 38-15 RE: INSTITUTE COMMENT LETTERS  
FILED ON DOL FIDUCIARY PROPOSAL

The Institute filed four comment letters in response to the Department of Labor's rule proposal package (released on April 14, 2015) regarding the definition of the term "fiduciary" for purposes of investment advice under ERISA. [\[1\]](#) A brief description of each letter is provided below along with a link to the letter on the Institute's website.

## **Fiduciary Definition Proposal**

In our comment letter on the definition of the term "fiduciary," the Institute recommends that the Department recognize that fiduciary status should apply only to a genuine relationship of trust and confidence between an investor and a financial services provider. The Institute explains that the Department's proposed fiduciary definition does not adhere to that important idea and, among other things, urges that the Department revise the definition in a manner that does not encompass needed informational, educational and sales activities within its coverage. The letter is available here:

[www.ici.org/pdf/15\\_ici\\_dol\\_fiduciary\\_def\\_ltr.pdf](http://www.ici.org/pdf/15_ici_dol_fiduciary_def_ltr.pdf).

## **Proposed Best Interest Contract Exemption, Proposed Principal Transactions Exemption, and Proposed Changes to Existing Exemptions**

In our letter on the Best Interest Contract Exemption, the Institute states that, if the Department retains the proposed exemption, it must simplify it greatly, stripping the proposed exemption of excessive conditions that render it unworkable. The letter also expresses deep concerns regarding the conceptual framework the Department has laid out for its streamlined high-quality low-fee exemption. Finally, the letter recommends several clarifications to the proposed Principal Transactions Exemption, including recommending

that UITs be included under the exemption's coverage, and recommends modifying certain proposed changes to existing prohibited transaction exemptions. The letter is available here: [www.ici.org/pdf/15\\_ici\\_dol\\_fiduciary\\_best\\_interest\\_ltr.pdf](http://www.ici.org/pdf/15_ici_dol_fiduciary_best_interest_ltr.pdf).

## **Regulatory Impact Analysis**

The Institute's comment letter on the Regulatory Impact Analysis ("RIA") supporting the Department's rule proposal identifies several fundamental flaws of the RIA, noting that the Department has failed not only to support its assertion that there is a "substantial failure of the market for retirement advice," but has also failed repeatedly to consider facts that contradict its conclusions, including a failure to "consider how the proposal could limit retirement savers' access to guidance, products, and services, or how such limits could affect savers—particularly lower- and middle-income savers with smaller account balances." The letter is available here:

[www.ici.org/pdf/15\\_ici\\_dol\\_fiduciary\\_reg\\_impact\\_ltr.pdf](http://www.ici.org/pdf/15_ici_dol_fiduciary_reg_impact_ltr.pdf).

## **Executive Summary Letter**

The fourth letter, from ICI President and CEO Paul Schott Stevens to Secretary of Labor Perez, summarizes and emphasizes the Institute's concerns regarding the approach the Department has taken in its proposed fiduciary rulemaking. The letter notes that, although the Department has asserted that the rule proposals sought to follow a "principles-based approach," the Department has in fact, chosen a different path and instead proposed "a set of convoluted, inflexible, and highly prescriptive rules" that, if adopted, will severely and negatively impact retirement savers' access to the guidance, products, and services they need to meet their retirement goals. The letter is available here:

[www.ici.org/pdf/15\\_ici\\_dol\\_fiduciary\\_overview\\_ltr.pdf](http://www.ici.org/pdf/15_ici_dol_fiduciary_overview_ltr.pdf).

David M. Abbey  
Deputy General Counsel - Retirement Policy

### **endnotes**

[1] See [Memorandum](#) to Pension Members No. 15-15; Operations Members No. 15-15; Small Funds Members No. 19-15; Bank, Trust and Retirement Advisory Committee No. 11-15; Broker/Dealer Advisory Committee No. 16-15; Transfer Agent Advisory Committee No. 18-15 [28939], dated April 29, 2015.